



DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

[Docket No. USPC-2021-02]

Paroling, Recommitting, and Supervising Federal Prisoners:

Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The United States Parole Commission is revising its regulations to permit a single commissioner to reopen a D.C. Code case and retard the parole effective date for up to 120 days when the U.S. Parole Commission receives information that the prisoner has committed new disciplinary infractions.

DATES: This regulation is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments due on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by docket identification number USPC-2021-02 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
2. Mail: Office of the General Counsel, U.S. Parole Commission, attention: USPC Rules Group, 90 K Street, N.E., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT: Helen H. Krapels, General Counsel, U.S. Parole Commission, 90 K Street, N.E., Third Floor, Washington, D.C. 20530, telephone (202) 346-7030. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION: Parole Commission is publishing an interim rule with a request for comments which would permit a single commissioner to reopen the case of a parole eligible D.C. Code offender and retard the parole effective date for up to 120 days when the Commission receives information that the prisoner has committed new disciplinary infractions. Currently, under 28 CFR 2.86(b), two commissioner votes are needed to take this action. One commissioner can already reopen and retard a case for up to 120 days without a hearing for release planning purposes, *i.e.*, to develop a release plan, or obtain placement in a Residential Re-entry Center, and changing the procedure to one commissioner is consistent with the voting rules for U.S. Code sentenced prisoners. This action, as with other decisions to retard a parole date by a limited period of time without conducting a hearing, allows the Commission the flexibility to take prompt action to impose a short sanction for minor misconduct, but conserve the decision to release the prisoner on parole. With many prisoners transitioning to the community through Residential Re-entry Centers earlier and more frequently, there is a benefit to permitting one commissioner to make the decision to sanction misconduct on the record with minimal disruption to the release planning process.

The Commission is promulgating this rule as an interim rule and is providing a 60-day period for public comment. The amended rule will take effect upon publication in the Federal Register.

Executive Orders 12866 and 13563

This regulation has been drafted and reviewed in accordance with Executive Order 12866, “Regulation Planning and Review,” section 1(b), Principles of Regulation, and in accordance with Executive Order 13565, “Improving Regulation and Regulatory Review,”

section 1(b), General Principles of Regulation. The Commission has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

This rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b).

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend \$100,000,000 or more in any one year, and they will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E–Congressional Review Act)

This rule is not a “major rule” as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E–Congressional Review Act, now codified at 5 U.S.C. 804(2). This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover,

this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term “rule” as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Interim Rule

Accordingly, the U. S. Parole Commission amends 28 CFR part 2 as follows:

PART 2 - [REVISED]

1. The authority citation for 28 CFR part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Revise §2.86 (b) to read as follows:

§2.86 Release on parole; rescission for misconduct.

* * * * *

(b) The Commission may reconsider any grant of parole prior to the prisoner’s actual release on parole, and may advance or retard a parole effective date or rescind a parole date previously granted based upon the receipt of any new and significant information concerning the prisoner including disciplinary infractions. A Commissioner may retard a parole date for disciplinary infractions (e.g., to permit the use of graduated sanctions) for up to 120 days without a hearing, in addition to any retardation ordered under §2.83(d).

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Patricia K. Cushwa,
Chairman (Acting),
U.S. Parole Commission.

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